

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ANGEER WALBERRY

Plaintiff,

v.

THE TRUSTEES OF INDIANA

UNIVERSITY, et al.,

Defendants.

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Cause No. 1:04-cv-848-DFH-WTL

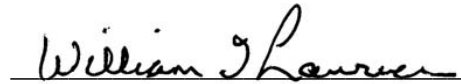
ENTRY ON MOTION FOR PAYMENT OF EXPENSES

This cause is before the Court on Plaintiff Angeer Walberry's Motion for Payment of Expenses. The motion is fully briefed, and the Court, being duly advised, **DENIES** the motion for the reasons set forth below.

Walberry's motion arises out of a motion to compel that she filed on December 23, 2005. The motion ultimately was granted in part and denied in part; in addition, subsequent to the motion being filed the defendants produced some of the documents that were at issue in the motion. Walberry argues that the result of her motion to compel was that she obtained a substantial amount of the discovery she was seeking, and therefore she is entitled to an award of expenses under the mandatory provision of Federal Rule of Civil Procedure 37(a)(4)(A). Walberry is incorrect, however; Rule 37(a)(4)(A) applies only to cases in which a motion to compel "is granted or if the disclosure or requested discovery is provided after the motion was filed." In this case, the motion was granted in part and denied in part, and only *some* of the requested discovery was provided after the motion was filed; thus, Rule 37(a)(4)(C) applies. That rule is discretionary; it provides that the court "may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties

and persons in a just manner.” The Court declines to so exercise its discretion,¹ especially in light of the fact that, in large part, the discovery obtained by Walberry after her motion to compel was filed was the result of negotiation and compromise between counsel, both with and without the aid of the Court.

SO ORDERED: 05/05/2006



Hon. William T. Lawrence, Magistrate Judge
United States District Court
Southern District of Indiana

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¹Even if the Court were inclined to award “reasonable expenses,” Walberry’s counsel’s request for \$7543.50 does not appear remotely reasonable and is not supported by any explanation as to how the 30.9 attorney hours for which compensation is sought were spent.